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MONTANA LEGISLATIVE HISTORY

Chapter 612 19 93

Bill H 121 S _____ Original bill & history ✓ C

H. Committee on Natural Resources			S. Committee on Judiciary		
Hearing Date(s)	Jan 18	✓ C	Hearing Date(s)	Mar 05	✓ C
		C		Mar 22	✓ C
		C			C
		C			C
Date Out		C		Mar 29	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

Note: A Free Conference Committee was appointed. Its minutes were not recorded.

H. Judiciary
Jan 29
Feb 03

HB 121 INTRODUCED BY FAGG, ET AL.

EXTEND LIABILITY STANDARDS TO CERTAIN DAMS IN ADDITION TO PERMITTED DAMS

BY REQUEST OF WATER POLICY COMMITTEE

1/08	INTRODUCED		
1/08	REFERRED TO NATURAL RESOURCES		
1/08	FIRST READING		
1/08	FISCAL NOTE REQUESTED		
1/12	FISCAL NOTE RECEIVED		
1/12	FISCAL NOTE PRINTED		
1/18	HEARING		
1/19	REREFERRED TO JUDICIARY		
1/29	HEARING		
2/05	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/09	2ND READING PASSED	62	38
2/13	3RD READING PASSED	63	32
	TRANSMITTED TO SENATE		
2/16	FIRST READING		
2/16	REFERRED TO JUDICIARY		
3/05	HEARING		
3/30	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/31	2ND READING CONCURRED AS AMENDED	49	0
4/01	3RD READING CONCURRED	48	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/05	2ND READING AMENDMENTS NOT CONCURRED	78	20
4/06	CONFERENCE COMMITTEE APPOINTED		
4/15	CONFERENCE COMMITTEE DISSOLVED		
	SENATE		
4/07	CONFERENCE COMMITTEE APPOINTED		
4/16	CONFERENCE COMMITTEE DISSOLVED		
	HOUSE		
4/15	FREE CONFERENCE COMMITTEE APPOINTED		
4/21	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/22	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	65	34
4/22	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	73	27
	SENATE		
4/16	FREE CONFERENCE COMMITTEE APPOINTED		
4/21	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/21	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	47	2
4/22	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	46	2
4/28	SIGNED BY SPEAKER		
4/28	SIGNED BY PRESIDENT		
4/29	TRANSMITTED TO GOVERNOR		
5/05	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 612		
	EFFECTIVE DATE: 10/01/93		

HB 122 INTRODUCED BY ANDERSON

ALLOW NONMONETARY LEASE OF FISH, WILDLIFE, AND PARKS LAND IN EXCHANGE FOR SERVICES

BY REQUEST OF DEPARTMENT OF FISH, WILDLIFE, AND PARKS

1/08	INTRODUCED

HOUSE BILL NO. 121

INTRODUCED BY FAGG, HARPER, GROSFIELD, BECK
BY REQUEST OF THE WATER POLICY COMMITTEE

IN THE HOUSE

JANUARY 8, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
JANUARY 19, 1993	ON MOTION, REREFERRED TO COMMITTEE ON JUDICIARY.
FEBRUARY 5, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 6, 1993	PRINTING REPORT.
FEBRUARY 9, 1993	SECOND READING, DO PASS.
FEBRUARY 10, 1993	ENGROSSING REPORT.
FEBRUARY 13, 1993	THIRD READING, PASSED. AYES, 63; NOES, 32.
FEBRUARY 15, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 16, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 30, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 31, 1993	SECOND READING, CONCURRED IN AS AMENDED.
APRIL 1, 1993	THIRD READING, CONCURRED IN. AYES, 48; NOES, 0.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 5, 1993	SECOND READING, AMENDMENTS NOT CONCURRED IN.
APRIL 6, 1993	ON MOTION, CONFERENCE COMMITTEE REQUESTED AND APPOINTED.
	IN THE SENATE
APRIL 7, 1993	ON MOTION, CONFERENCE COMMITTEE REQUESTED AND APPOINTED.
	IN THE HOUSE
APRIL 15, 1993	ON MOTION, CONFERENCE COMMITTEE DISSOLVED.
	ON MOTION, FREE CONFERENCE COMMITTEE REQUESTED AND APPOINTED.
	IN THE SENATE
APRIL 16, 1993	ON MOTION, CONFERENCE COMMITTEE DISSOLVED.
	ON MOTION, FREE CONFERENCE COMMITTEE REQUESTED AND APPOINTED.
APRIL 22, 1993	FREE CONFERENCE COMMITTEE REPORT ADOPTED.
	IN THE HOUSE
APRIL 22, 1993	SECOND READING, FREE CONFERENCE COMMITTEE REPORT ADOPTED.
	THIRD READING, FREE CONFERENCE COMMITTEE REPORT ADOPTED.
APRIL 23, 1993	SENT TO ENROLLING.
	REPORTED CORRECTLY ENROLLED.

INTRODUCED BY House BILL NO. 121

BY REQUEST OF THE WATER POLICY COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A GROSS NEGLIGENCE LIABILITY STANDARD FOR CERTAIN DAM OWNERS; EXTENDING THE LIABILITY STANDARDS TO CERTAIN DAMS IN ADDITION TO PERMITTED DAMS; EXTENDING THE LIABILITY STANDARDS TO NONFEDERAL DAMS ON FEDERAL PROPERTY; ESTABLISHING A PENALTY; AMENDING SECTIONS 85-15-107 AND 85-15-305, MCA; AND REPEALING SECTION 85-15-501, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 85-15-107, MCA, is amended to read:

"85-15-107. **Exemptions.** (1) The provisions of ~~85-15-105, 85-15-106,~~ 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 85-15-305, 85-15-401, ~~85-15-501, and~~ 85-15-502, and [section 4] do not apply to:

(a) dams subject to a permit issued pursuant to 82-4-335 for the period during which the dam is subject to the permit;

(b) ~~The provisions of 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 85-15-305, 85-15-401, 85-15-501, and 85-15-502 do not apply to~~ federal dams and reservoirs, ~~to nonfederal dams and reservoirs located on federal lands if they are subject to a dam safety review by a federal agency, or to;~~

(c) dams and reservoirs licensed and subject to inspection by the federal energy regulatory commission; ~~The provisions of 85-15-105, 85-15-106, 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 85-15-305, 85-15-401, 85-15-501, and 85-15-502 do not apply to; or~~

(d) dams that are required to obtain a certificate of environmental compatibility and public need pursuant to 75-20-201 for the period during which the dam is subject to the certificate. ~~In addition, the provisions of 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 85-15-305, 85-15-401, 85-15-501, and 85-15-502 do not apply until July 1, 1990, to high-hazard dams that have been inspected by the U.S. army corps of engineers pursuant to P.L. 92-367 and for which resultant dam safety reports have been submitted to the owner.~~

(2) The provisions of 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 85-15-401, 85-15-502, and [section 4] do not apply to nonfederal dams and reservoirs located on federal lands if they are subject to a dam safety review by a federal agency."

NEW SECTION. **Section 2.** Purpose. (1) The legislature finds that dams provide a variety of benefits to the state of Montana. These benefits include the regulation of

HB 121
INTRODUCED BILL

Montana Legislative Council

streamflows for flood control; water storage for irrigation, for municipal, industrial, and stock water consumption, and for hydropower generation; improved opportunities for flatwater recreation; and improved fisheries. Additionally, dams play a crucial role in maintaining the vitality of Montana's economy. The state therefore has a legitimate and compelling interest in encouraging the construction of dams that conform to the water storage policy provided in 85-1-703.

(2) The legislature further finds that one impediment to the construction of new dams is the potential liability associated with dam construction and operation. The legislature understands the inherent risks to public safety associated with dam construction and operation but finds that compliance with the Montana Dam Safety Act reduces those risks to an acceptable level.

(3) The legislature further understands and finds that a reasonable and prudent landowner should understand the inherent risks associated with placing a structure below an existing dam. The legislature finds that a landowner who places a structure downstream from an existing dam assumes some of the potential risk to person or property of dam failure. The legislature finds that instituting a gross negligence liability standard for existing permitted and other existing properly constructed dams, as provided for in

85-15-305, serves the compelling state interest of encouraging dam construction in the least intrusive manner possible and that the development of the gross negligence liability standard is closely related to that compelling state interest.

Section 3. Section 85-15-305, MCA, is amended to read:

"**85-15-305. Liability of owners for damage.** (1) Except as provided in ~~subsection~~ subsections (2) and (3), nothing in this chapter relieves an owner of a dam or reservoir of any legal duty, obligation, or liability incident to its ownership or operation, including any damages resulting from leakage or overflow of water or floods caused by the failure or rupture of the dam or reservoir.

(2) The owner of a dam or reservoir that has been permitted by the department in accordance with this chapter or that was designed, constructed, and regularly maintained under the supervision of an engineer is ~~not~~:

(a) in the absence of negligence, not liable for damages to persons or property resulting from flows of water from failure of the dam or reservoir; ~~which--are---of sufficient--magnitude--to--exceed-the-limits-of-the-100-year floodplain-as-defined-in-76-5-103;~~ or

(b) in the absence of gross negligence:

(i) not liable for property damages resulting from flows of water from failure of the dam or reservoir to

structures placed downstream from an existing dam; or

(ii) not liable for personal injury or death if the person injured or killed was downstream from an existing dam as a result of a structure being placed downstream from the existing dam.

(3) In addition, the owner of any dam or reservoir that has been permitted by the department in accordance with this chapter or that was designed, constructed, and regularly maintained under the supervision of an engineer may, without incurring liability, allow passage through the reservoir of inflows without diminution."

NEW SECTION. **Section 4. Civil penalty.** An owner of a dam with an impounding capacity of 50 acre-feet or greater measured at the maximum normal operating pool who fails to comply with a provision of this chapter or a rule or order of the department adopted or made pursuant to this chapter is subject to a civil penalty not to exceed $1,000. Each day of violation is a separate offense.

NEW SECTION. **Section 5. Repealer.** Section 85-15-501, MCA, is repealed.

NEW SECTION. **Section 6. Codification instruction.** [Section 4] is intended to be codified as an integral part of Title 85, chapter 15, part 5, and the provisions of Title 85, chapter 15, part 5, apply to [section 4].

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0121, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

The bill establishes a gross negligence liability standard in damage suits against dam owners of permitted or engineered dams by people taking up occupancy downstream from an already existing dam. This liability standard is extended to non-federal dams on federal property as well. This bill also establishes a penalty for failure to comply with the Montana Dam Safety Act, or rule, or order of the Department of Natural Resources and Conservation.

FISCAL IMPACT:

Expenditures: None

Revenues: Civil penalties assessed would be deposited in the general fund. The amount of civil penalties to be levied is unknown.

Dave Lewis 1-12-93

DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Russell C. Fagg

RUSSELL FAGG, PRIMARY SPONSOR DATE

Fiscal Note for HB0121, as introduced

HB 121

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN DICK KNOX**, on January 18, 1993, at 3:00 p.m.

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Rolph Tunby, Vice Chairman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Russ Fagg (R)
Rep. Gary Feland (R)
Rep. Mike Foster (R)
Rep. Bob Gilbert (R)
Rep. Hal Harper (D)
Rep. Scott Orr (R)
Rep. Bob Raney (D)
Rep. Dore Schwinden (D)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Howard Toole (D)
Rep. Doug Wagner (R)

Members Excused: None

Members Absent: None

Staff Present: Todd Everts, Environmental Quality Council
Michael Kakuk, Environmental Quality Council
Roberta Opel, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 121
Executive Action: HB 30 Discussion on HB 64

HEARING ON HB 121

Opening Statement by Sponsor:

REP. RUSSELL FAGG, HD 89, Billings, told the committee that HB 121 would establish standards for dam negligence and explained that the liability section of HB 121 is the heart of the bill.

The bill stipulates that dam inspections should be done regularly.

Proponents' Testimony:

Gary Fritz, Department of Natural Resources and Conservation (DNRC), stated current case law regarding water reservation in Montana is scarce and therefore, the DNRC supports HB 121. He added the flood control and recreation components to HB 121 are good components. **EXHIBIT 1**

Jo Brunner, Montana Water Resources Association (MWRA), testified in support of HB 121 and stated MWRA would continue to support and work with water policy in Montana.

Opponents' Testimony:

Russell Hill, Montana Trial Lawyers Association (MTLA), stated the Association opposed HB 121 because they are concerned the Water Policy Committee would be given ability to transform current dam policy. He said HB 121 leaves interpretation of dam failure law up to the court. He believes HB 121 is unconstitutional because it denies dam owners their rights.

Jim Jensen, Montana Environmental Information Center (MEIC), stated HB 121 offers differing standards of liability which would affect public resources, particularly water quality. He noted that the stability of stream channels is threatened by the construction of dams.

Questions From Committee Members and Responses:

REP. BOB RANEY asked **REP. FAGG** if HB 121 should be in the Judiciary Committee.

REP. HOWARD TOOLE asked if renters would be precluded from the dam requirements within the bill. He said there should be a statement in the bill if it is to be considered retroactive.

REP. TOOLE asked if there was a notification process within HB 121 regarding failure to warn. **REP. FAGG** stated that was not feasible due to the size of the state.

REP. EMILY SWANSON asked **Mr. Hill** to define gross negligent standards and to explain the consequences if a dam owner did not follow the level of care advised. **Mr. Hill** replied that the consequences for negligence would be dependent on the degree of that negligence.

Closing by Sponsor:

REP. FAGG closed by saying he felt the phrase "hydraulic shadow" should be taken out of HB 121 as there is no hydraulic shadow.

HOUSE OF REPRESENTATIVES
53RD LEGISLATURE - 1993
NATURAL RESOURCES COMMITTEE

ROLL CALL

DATE 1-18-93

NAME	PRESENT	ABSENT	EXCUSED
REP. DICK KNOX, CHAIRMAN	✓		
REP. ROLPH TUNBY, VICE CHAIRMAN	✓		
REP. JODY BIRD	✓		
REP. VIVIAN BROOKE	✓		
REP. RUSS FAGG	✓		
REP. GARY FELAND	✓		
REP. MIKE FOSTER	✓		
REP. BOB GILBERT	✓		
REP. HAL HARPER	✓		
REP. SCOTT ORR	✓		
REP. BOB RANEY	✓		
REP. DORE SCHWINDEN	✓		
REP. JAY STOVALL	✓		
REP. EMILY SWANSON	✓		
REP. HOWARD TOOLE	✓		
REP. DOUG WAGNER	✓		

HR:1993
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CS-09

EXHIBIT 1
DATE 1-18-93
HB 121

TESTIMONY OF THE
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
ON HOUSE BILL 121, FIRST READING

BEFORE THE HOUSE NATURAL RESOURCES COMMITTEE

JANUARY 18, 1992

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A GROSS NEGLIGENCE LIABILITY STANDARD FOR CERTAIN DAM OWNERS; EXTENDING THE LIABILITY STANDARDS TO CERTAIN DAMS IN ADDITION TO PERMITTED DAMS; EXTENDING THE LIABILITY STANDARDS TO NONFEDERAL DAMS ON FEDERAL PROPERTY; ESTABLISHING A PENALTY; AMENDING SECTIONS 85-15-107 AND 85-15-305, MCA; AND REPEALING SECTION 85-15-501, MCA."

The Department of Natural Resources and Conservation (DNRC) supports House Bill 121. It is the result of a thorough review of Montana's laws and regulations concerning the safety of dams by the Legislative Water Policy Committee. The DNRC participated in that review and concurs with the Water Policy Committee proposal.

This bill addresses the fact that little precedent has been established in the courts regarding the liability standard to be applied to owners of dams in Montana. Further, the Montana Dam Safety Act only establishes a ***negligence*** liability standard for dams having operating permits from the DNRC. As such, it falls short in addressing many Montana dams since operating permits are issued only on high-hazard dams -- those larger than 50 acre-feet ***and*** where the loss of life is likely if the structure should fail.

The Dam Safety Act was passed with this liability "*carrot*" as an incentive to high-hazard dam owners to obtain operating permits. House Bill 121 proposes to extend this "*carrot*" to other types of dams as a means to better assure their safety. More specifically, it would apply a ***negligence*** liability standard to dams constructed, operated, and maintained under the supervision of an engineer, including private dams located on federal land.

This legislation also deals with the liability situation created when a landowner places a home or other structure downstream of an ***existing*** dam. Other states have wrestled with this encroachment problem which is certainly not unique to Montana. A few have provided powers to local governments to zone areas below an existing dam to exclude homes or to deny subdivisions of land below a dam. In contrast, House Bill 121 provides that, if such a dam subsequently fails, the downstream landowner must prove that the dam owner was ***grossly*** negligent before the dam owner can be found liable for

any damages. Under current law, if homes or other structures are placed below an existing dam, it results in the dam being classified as high-hazard and requires the dam owner to comply with established minimum state standards of configuration, operation, and maintenance. The proposed legislation serves to balance the increased cost to a dam owner of assuring the safety of a dam that, absent the new homes or structures, would not be subject to such costs.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Natural Resources COMMITTEE BILL NO. HB 121

DATE 1-18-93 SPONSOR(S) Foss

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
GARY FRITZ	DNRC	X	
[signature]	MWRA	X	
Russell B Hill	MTRA		X
Jim Jensen	MEIC		X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

REP. ANGELA RUSSELL asked **SEN. TOWE** if there are more of these cases in court. **SEN. TOWE** said he is not sure if there are more or fewer cases of gang rape, but the purpose of this bill is to deter any more from occurring. He said cases of date rape appear more in court than any other kind of rape. **REP. RUSSELL** also mentioned that due to the trauma of rape, many victims choose not to come to court to testify, and is there any way the courts can aid in getting the victims to testify? **SEN. TOWE** said that many rape victims can videotape their testimony so they don't have to present their case in court.

REP. RANDY VOGEL asked **SEN. TOWE** if he considered including "medical costs" after reasonable costs on page 2, line 24. **SEN. TOWE** suggested adding "and costs of" after reasonable costs.

Closing by Sponsor: None.

HEARING ON HB 121

Opening Statement by Sponsor:

REP. RUSSELL FAGG, HOUSE DISTRICT 89, Billings. A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A GROSS NEGLIGENCE LIABILITY STANDARD FOR CERTAIN DAM OWNERS; EXTENDING THE LIABILITY STANDARDS TO CERTAIN DAMS IN ADDITION TO PERMITTED DAMS; EXTENDING THE LIABILITY STANDARDS TO NONFEDERAL DAMS ON FEDERAL PROPERTY; ESTABLISHING A PENALTY; AMENDING SECTIONS 85-15-107 AND 85-15-305, MCA; AND REPEALING SECTION 85-15-501, MCA."

REP. FAGG stated HB 121 tries to encourage the construction of dams. By saying that somebody moves underneath an existing dam, i.e. builds a house under an existing dam, and the dam fails, the person who moved underneath the dam would have to prove gross negligence on the part of the dam owner for the dam owner to be liable. In all other cases where the person was living under the dam before it was built, then it would be under regular negligence standards. **EXHIBIT 4**

CHAIRMAN FAGG introduced **Michael Kakuk, Staff Attorney, Water Policy Committee.** There are three issues of dam safety: 1) the acceptable degree of risk, public safety, and allocation of that risk; 2) developing a mailing list of 150 county commissioners, disaster emergency services personnel, high hazard dam owners and engineers involved in the design, structure and engineering of dams; and 3) public policy funding. The questions asked are what degree of risk is acceptable around a high hazard dam, and who should bear the burden of that risk. **EXHIBIT 5**

Proponents' Testimony:

Gary Fritz, Administrator, Water Resources Division, Department of Natural Resources and Conservation, stated the Department did participate in the effort that led to this legislation of the Water Policy Committee. The DNRC supports the intent of this legislation because people who move in below the high hazard dam know there are risks associated with doing so. This bill not only addresses dams that will be built, but it addresses the problem of existing dams as well.

Jo Bruner, Executor Director, Montana Water Resources Association. Ms. Bruner said the MWRA strongly supports the construction of feasible storage facilities as a necessary means to alleviate increasing needs and uses of water in Montana. The MWRA does not want to do away with gross negligence standards.

Opponents' Testimony:

Russell Hill, Executive Director, Montana Trial Lawyers Association. EXHIBIT 6

Jim Jensen, Montana Environmental Information Center. Mr. Jensen said that MEIC is concerned about the risks of high-hazard dams, although there is no control over the structure's construction. Too many innocent bystanders could be hurt. Most people who lose their home don't own them, and this is extremely costly.

Informational Testimony: None.

Questions From Committee Members and Responses:

REP. WYATT asked **Mr. Kakuk** with what funding these dams are built? **Mr. Kakuk** said that 40 percent are state owned and 60 percent are privately owned.

REP. BROWN asked **Laurence Siroky, Water Resources Division,** where a structure such as the Berkeley Pit in Butte stands under this legislation. He said the definition of a high hazard dam in the MCA codes, is "any dam or reservoir, the failure of which would cause the loss of life." The Pit is not a dam, but it could be defined as a reservoir. The definition of reservoir means "any valley, basin, cooley, ravine or other land area that contains 50 acre feet or more of impounded water measured at maximum, normal, operating pool." **REP. BROWN** assumes that 12 million gallons of acid water in the Berkeley Pit is over 50 acre feet. **Mr. Siroky** recommended the criteria that is used for a dam and this legislation is the following: over 50 acre foot and cost of life if it should fail. There is no classification for the Berkeley Pit in the bill.

REP. SMITH said the Warm Spring Ponds were built after the establishment of the surrounding, existing homesites. If these should overflow, are they considered high hazard structures?

Mr. Siroky said that if they should fail, under current statute, because they are high-hazard, people would be held to the higher liability standard if they built the structure after the ponds were built.

REP. BIRD asked **CHAIRMAN FAGG** who else is liable should there be a failure of the dam. **CHAIRMAN FAGG** said the engineers could be sued, or a third party complaint could be filed against the engineers.

REP. MCCULLOCH asked **CHAIRMAN FAGG** if there is a way to notify people who would like to move near a dam that may be impacted by this bill. **CHAIRMAN FAGG** said it's virtually impossible. It could be added to the land deeds, but that would be an overwhelming task.

REP. VOGEL asked **CHAIRMAN FAGG** on page 5, line 3, specifically, to define how far is "downstream." **CHAIR FAGG** said "downstream" is as far as the water goes that could cause a problem.

Closing by Sponsor:

CHAIRMAN FAGG closed by saying as long as more people move to Montana, we're going to have more people potentially moving below existing dams. Most dam owners do not provide insurance; it's very expensive. With a bill like this, there would be a better chance to buy insurance. Trial lawyers don't like this legislation because it adds a gross negligence standard to the Dam Safety Act. It is also true that downstream owners who have moved below a dam will have reduced property values, but that makes sense because they are moving to a potentially dangerous situation. Addressing **REP. BROWN'S** concern about the Berkeley Pit, there is no intention of adding the Berkeley Pit to this bill, and perhaps, an appropriate amendment can be drafted to exempt the Berkeley Pit.

HEARING ON HB 258

Opening Statement by Sponsor:

HOWARD TOOLE, HD 60, Missoula. A BILL FOR AN ACT ENTITLED: "AN ACT EXCLUDING FROM THE INTERIM EARNINGS DEDUCTION IN A SUCCESSFUL WRONGFUL DISCHARGE SUIT AN AMOUNT EQUAL TO THE COSTS OF OBTAINING OR RELOCATING TO NEW EMPLOYMENT; AND AMENDING SECTION 39-2-905, MCA."

HB 258 addresses the Wrongful Discharge Act. Section 1 in the bill is part of the Act, and it's the section of the Act that sets forth how much a person can collect in terms of damages in these types of cases. The entire section says that someone who has been lawfully terminated is limited to being awarded loss of wages for a period of four years on the date of discharge. What

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL DATE 1-29-93

NAME	PRESENT	ABSENT	EXCUSED
Rep. Russ Fagg, Chairman	✓		
Rep. Randy Vogel, Vice-Chair	✓		
Rep. Dave Brown, Vice-Chair	✓		
Rep. Jodi Bird	✓		
Rep. Ellen Bergman	✓		
Rep. Vivian Brooke	✓		
Rep. Bob Clark	✓		
Rep. Duane Grimes	✓		
Rep. Scott McCulloch	✓		
Rep. Jim Rice	✓		
Rep. Angela Russell	✓		
Rep. Tim Sayles	✓		
Rep. Liz Smith	✓		
Rep. Bill Tash	✓		
Rep. Howard Toole	✓		
Rep. Tim Whalen	✓		
Rep. Karyl Winslow		✓	
Rep. Diana Wyatt	✓		

HR:1993
wp.rollcall.man
CS-09

EXHIBIT 4
DATE 1-29-93
HB 121

TESTIMONY OF THE
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
ON HOUSE BILL 121, FIRST READING

BEFORE THE HOUSE JUDICIARY COMMITTEE

JANUARY 29, 1992

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A GROSS NEGLIGENCE LIABILITY STANDARD FOR CERTAIN DAM OWNERS; EXTENDING THE LIABILITY STANDARDS TO CERTAIN DAMS IN ADDITION TO PERMITTED DAMS; EXTENDING THE LIABILITY STANDARDS TO NONFEDERAL DAMS ON FEDERAL PROPERTY; ESTABLISHING A PENALTY; AMENDING SECTIONS 85-15-107 AND 85-15-305, MCA; AND REPEALING SECTION 85-15-501, MCA."

The Department of Natural Resources and Conservation (DNRC) supports House Bill 121. It is the result of a thorough review of Montana's laws and regulations concerning the safety of dams by the Legislative Water Policy Committee. The DNRC participated in that review and concurs with the Water Policy Committee proposal.

This bill addresses the fact that little precedent has been established in the courts regarding the liability standard to be applied to owners of dams in Montana. Further, the Montana Dam Safety Act only establishes a ***negligence*** liability standard for dams having operating permits from the DNRC. As such, it falls short in addressing many Montana dams since operating permits are issued only on high-hazard dams -- those larger than 50 acre-feet ***and*** where the loss of life is likely if the structure should fail.

The Dam Safety Act was passed with this liability "*carrot*" as an incentive to high-hazard dam owners to obtain operating permits. House Bill 121 proposes to extend this "*carrot*" to other types of dams as a means to better assure their safety. More specifically, it would apply a ***negligence*** liability standard to dams constructed, operated, and maintained under the supervision of an engineer, including private dams located on federal land.

This legislation also deals with the liability situation created when a landowner places a home or other structure downstream of an ***existing*** dam. Other states have wrestled with this encroachment problem which is certainly not unique to Montana. A few have provided powers to local governments to zone areas below an existing dam to exclude homes or to deny subdivisions of land below a dam. In contrast, House Bill 121 provides that, if such a dam subsequently fails, the downstream landowner must prove that the dam owner was ***grossly*** negligent before the dam owner can be found liable for

any damages. Under current law, if homes or other structures are placed below an existing dam, it results in the dam being classified as high-hazard and requires the dam owner to comply with established minimum state standards of configuration, operation, and maintenance. The proposed legislation serves to balance the increased cost to a dam owner of assuring the safety of a dam that, absent the new homes or structures, would not be subject to such costs.

EXHIBIT 5
DATE 1-29-93
SB HB 121

Amendments to House Bill No. 121
First Reading Copy

Requested by Rep. Fagg
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
January 15, 1993

1. Page 4, line 13.
Following: "failure" on line 12
Strike: "or rupture"

2. Page 4, line 16.
Following: "and"
Strike: "regularly"
Insert: "properly"

3. Page 5, line 2.
Following: "death"
Insert: "resulting from flows of water from failure of the dam or reservoir"

4. Page 5, line 8.
Following: "and"
Strike: "regularly"
Insert: "properly"

EXHIBIT # 6
DATE 1-29-93
SB HB 121

Montana Trial Lawyers ASSOCIATION

'ectors:
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Director Emeritus
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omas J. Beers
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William A. Rossbach
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Paul M. Warren
Governor

January 29, 1993

Rep. Russell Fagg, Chair
House Judiciary Committee
Room 325, State Capitol
Helena, MT 59624

RE: HB 121

Mr. Chair, Members of the Committee:

Thank you for this opportunity to express MTLA's opposition to HB 121, which relaxes the standards of liability applicable to owners of high-hazard dams in Montana. MTLA opposes HB 121 because of several concerns:

1. Although the Water Policy Committee recommended a gross-negligence standard be applied only to victims who "encroach" upon an existing dam, HB 121 applies a gross-negligence standard indiscriminately. The bill extends far beyond the victim who, by locating downstream from an existing non-high-hazard dam, creates for the first time the potential for loss of human life and thus transforms that dam into a high-hazard dam. The bill extends even beyond victims who knowingly locate below existing high-hazard dams. In fact, as the diagram on page 4 of this testimony illustrates, the bill applies a gross-negligence standard to victims who are completely irrelevant to the high-hazard status of dams.

2. Upon the bill's effective date, owners of existing dams will be no less liable for negligence than they were a day earlier. Moreover, any dam constructed after the bill's effective date will still entail dam-owner liability to all existing property owners for negligence. And the engineers, contractors, consultants and similar entities which build dams for dam owners gain no liability protection whatsoever from HB 121. Faced with the same exposure to liability, no insurance company will lower its liability premiums--even if additional liability exposure is limited to gross negligence. Not surprisingly, the State of Montana--

which owns a quarter of all high-hazard dams--predicts that HB 121 will have no fiscal impact on expenditures (self-insurance, claims, etc.).

3. HB 121 leaves the interpretation of dam "failure" (page 4, line 20; page 4, line 25) to Montana courts and, by doing so, may actually subject dam owners to more, not less, liability. Current law already distinguishes between failure and rupture of a dam (Sec. 85-15-305(1), MCA), and the structural "failure" of a dam apparently differs from the operational failure of a dam owner. Consequently, a dam owner who is only liable now for negligently allowing flows of impounded water exceeding the 100-year floodplain may, under HB 121, become strictly liable for any flows of impounded water which are due to some cause other than dam "failure."

4. HB 121 leaves the interpretation of "downstream" (page 5, line 1; page 5, line 3) to Montana courts and, by doing so, may actually subject dam owners to more, not less, liability. In the diagram attached as page 4 of this testimony, cabins A, B, and C are all located downstream from the dam. But HB 121 apparently treats the person who "placed" cabin A outside the projected flood area no differently than the person who "placed" cabin B within the hydraulic shadow and the person who "placed" cabin C within the 100-year floodplain. A court forced to distinguish between the three, and also faced with HB 121's emphasis on the risks willingly accepted by victims, would likely apply "downstream" to only to cabin C and the well-publicized 100-year floodplain.

5. Because its provisions are vague and inconsistent, HB 121 will dramatically increase the litigation resulting from dam-related injuries or property damage. The bill, for example, leaves Montana courts to determine whether victims were injured "as a result of a structure being placed downstream of an existing dam" (page 5, line 4)--an enormously subjective determination, especially in the context of a bill which relies on the willing acceptance of risks by those victims, and especially since "structures" includes highways, stores, parks, campgrounds, and similar facilities designed to attract transient populations. Because a quarter of Montana's high-hazard dams are state-owned, and because the state's maximum liability is limited to $1.5 million, HB 121 will also force citizens victimized by a state-owned dam to divide a single sum while proving different degrees of fault.

6. HB 121 violates constitutional principles of equal protection if it discriminates irrationally between victims who "place" a "structure" before the construction of a high-hazard dam and victims who "place" a "structure" below an existing high-hazard dam, even though both categories of victim produce identical results vis a vis dam owners. HB 121 also violates constitutional principles of equal protection if it irrationally discriminates between victims who "place" a "structure" below an existing high-hazard dam before the bill's effective date and victims who do so after the bill's effective date, even though both categories of victims produce identical results vis a vis dam owners. And there is no rational possibility that HB 121, by introducing such discrimination, will contribute to lower liability premiums or new construction of dams.

7. HB 121, by unilaterally shifting the financial risks of negligence from dam owners to current property owners, would reduce the value of downstream

property owners. In this regard, note the complaints of dam owners that the mere connotations of the term "high-hazard" scare away potential buyers.

More than 80 high-hazard dams in Montana face a July 1, 1995, deadline for meeting safety standards. The projected cost of rehabilitating state-owned dams alone exceeds $200 million. Few current owners of high-hazard dams insure the actual risks those dams pose. The Water Policy Committee publicly worried about the apparent inability of DNRC to enforce inspection requirements. Current DNRC policies tolerate substandard spillways. Alerted by these warning signs, and confronted by dam owners who seek to insulate themselves from liability for negligence, this committee should demand clear objectives and precise language from the proponents of HB 121. MTLA believes that the bill needs more of both.

Thank you for considering these comments. If I can provide additional information or assistance, please notify me.

Respectfully,

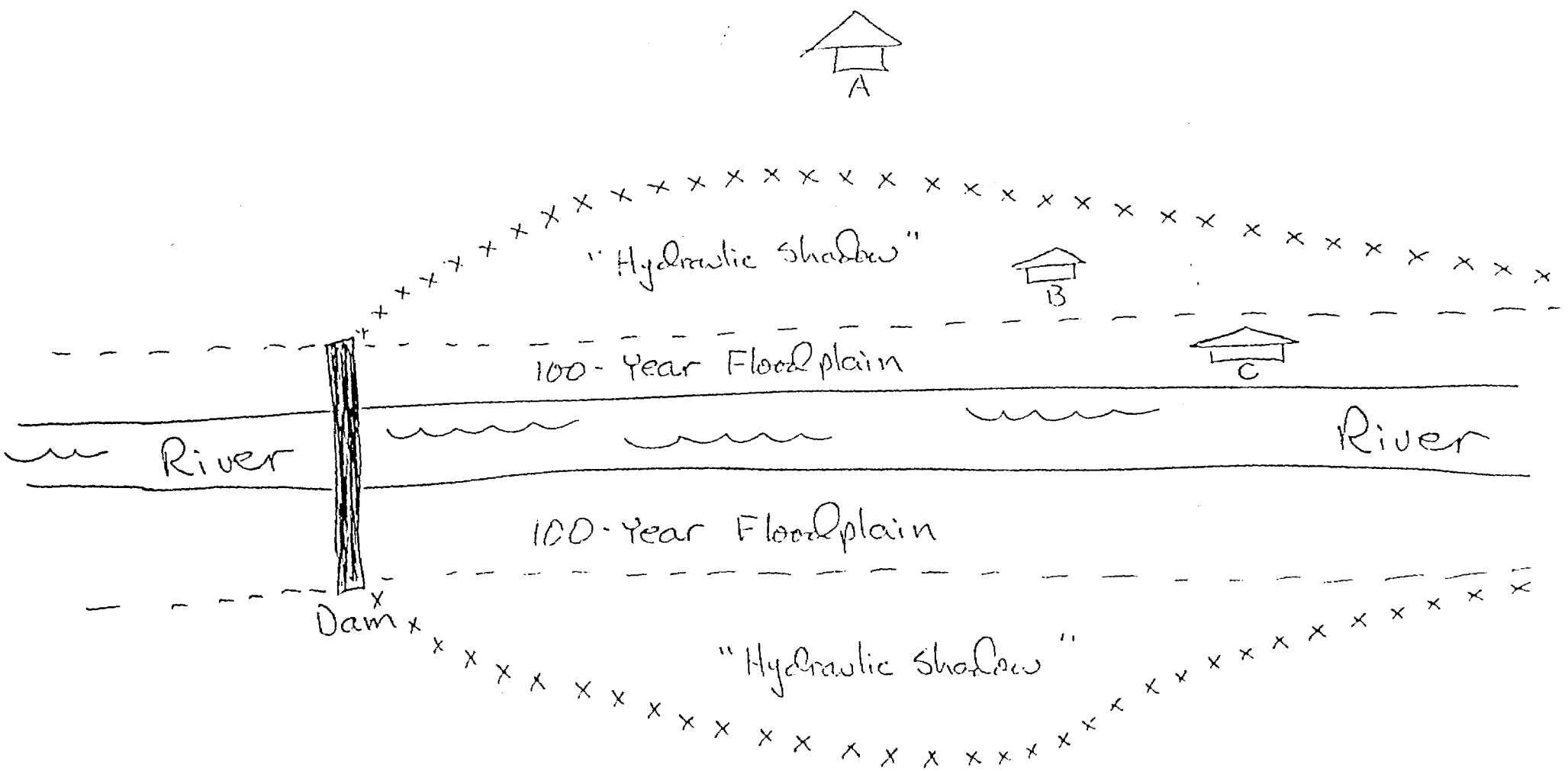
Russell B. Hill

Russell B. Hill
Executive Director

EXHIBIT 6
DATE 1/29/93
HB 121

EXHIBIT 6
DATE 1/29/93
HB 121

"Downstream"



HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Judiciary COMMITTEE BILL NO. HB 121

DATE Jan. 29, 1993 SPONSOR(S) R. Fagg

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
GARY FRITZ	DNRC	X	
Michael S. KAKUK	Water Policy Center	INFO ONLY	
Jim Jensen	MEIC		X
Russell B Hill	MTLA		X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

years to find a job.

REP. WHALEN responded by saying a person may look for a job within the first two years and may take something part time, and in that period time, the person may continue to look for work throughout the four-year period. **REP. WHALEN** believes the bill limits a person's ability to have those expenses taken into account. He said he agrees with **REP. WYATT** and doesn't believe there's any incentive to look for a job when someone has been wrongfully discharged, especially in a job where a person was earning a decent salary. The amount of damages were limited in 1987 quite drastically. In fact, it's been limited to such an extent that, in many cases, even though a person may have been wrongfully discharged, the person cannot, from an economic point of view, even bring a lawsuit because the limitation on the ability to recover is such that, by the time attorney's fees and costs are paid, it's just not economical to bring those kinds of cases to court. **REP. WHALEN** believes that was the intent of the 1987 law, and he thinks the very type of people who suffer the most by that limitation are the people being turned out in their fifties who have already developed a course in life, have gotten married, have raised children and put them through college. The large companies turn those people out because they can get rid of people who are starting to develop seniority and pension benefits. This is a real serious problem in this country.

Vote: Question was called on the amendment on page 1, line 21, and in the title of the bill. The amendment failed on a tie vote of 9-9. Those in favor of the amendment were **CHAIRMAN FAGG, REPS. BIRD, WINSLOW, TASH, SMITH, SAYLES, BERGMAN, VOGEL** and **CLARK**. Those voting against the amendment were **REPS. BROWN, WYATT, GRIMES, RICE, BROOKE, RUSSELL, WHALEN, TOOLE**, and **MCCULLOCH**.

Motion/Vote: **REP. BROWN MOVED HB 258 DO PASS AS AMENDED.** Motion carried unanimously 18-0.

EXECUTIVE ACTION ON HB 121

Motion: **CHAIRMAN FAGG MOVED HB 121 DO PASS.**

Motion/Vote: **REP. BROWN** moved an amendment to the effect that the provision of 85-15-305 does not apply to dams and reservoirs at a national superfund priority site as defined by the Federal CERCLA Act of 1980. This amendment ensures that the liability for the Berkeley Pit remains with its existing and previous owners. Motion carried unanimously 18-0.

Motion: **CHAIRMAN FAGG** moved the following amendments.

1. Page 4, line 13.
Following: "failure" on line 12
Strike: "or rupture"

2. Page 4, line 16.
Following: "and"
Strike: "regularly"
Insert: "properly"

3. Page 5, line 2.
Following: "death"
Insert: "resulting from flows of water from failure of the dam or reservoir"

4. Page 5, line 8.
Following: "and"
Strike: "regularly"
Insert: "properly"

Discussion:

These are technical amendments proposed by **Michael Kakuk, Water Policy Committee,** after discussion with **Russell Hill, Montana Trial Lawyers Association.** There was some confusion about page 4, line 13 "caused by the failure or rupture" which seemed to be redundant, and **Mr. Kakuk** and **Mr. Hill** struck "or rupture." On page 4, line 16, "regularly" was stricken and "properly maintained" was inserted because the dams have to be maintained according to the Dam Safety Act, which means engineers have to inspect the dams at least once every five years. On page 5, line 2, following "death", language will be written to clarify death resulting from flows of water failure of the dam or reservoir. **CHAIRMAN FAGG** finds these amendments more technical than substantive.

Vote: The question was called on the amendments. Motion carried unanimously 18-0.

Discussion:

CHAIRMAN FAGG discussed the intent and purpose of the bill, specifically, gross negligence, since **REP. TOOLE** was unable to attend the hearing. **CHAIRMAN FAGG** read from page 5, line 2, "In the absence of gross negligence, the dam owner is not liable for personal injury or death resulting from failure of the dam if the person injured or killed was downstream from an existing dam as a result of a structure being placed downstream from the existing dam."

REP. TOOLE asked if this bill is retroactive. **CHAIRMAN FAGG** said the bill is not retroactive, and it will go into effect October 1, 1993.

CHAIRMAN FAGG said the bill is written fairly straightforward, and the purpose of the bill is to maintain that if someone builds

below an existing dam, they should be aware they are moving to a potential danger site and must be more conscientious in order to recover damages if a dam fails. The **Water Policy Committee** thought this was the best language to accomplish this.

REP. WHALEN made an observation about the bill which he perceived to be a problem. First, he believes there is an underlying presumption that people will be held accountable for moving under the shadow of these dams or, for that matter, engaging in any kind of conduct where there is an associated risk. Second, the term negligence means that a person can only be held liable for his conduct if a reasonable person could foresee that either doing or not doing something could cause injury to another person; just because a dam breaks or an incident happens, it doesn't mean that people are automatically held accountable.

REP. WHALEN said he sees a lot of technical problems with the way this bill is put together. However, he does understand the policy that **CHAIRMAN FAGG** says underlies the purpose of this bill. The fact is, the law right now is assumption of risk.

CHAIRMAN FAGG said rational basis, in this case, is simply putting some of the burden on people who build underneath an existing dam. It is putting some of the responsibility on those people for building in a potentially dangerous situation.

REP. TOOLE'S main concern is that the Montana Supreme Court may take up this bill unless the committee takes some different approaches to it.

CHAIRMAN FAGG said that if **REP. TOOLE'S** main objection to the bill is the October 1, 1993, deadline and treating people on the other side of that deadline differently, the bill could be made retroactive. The legislature would have the authority to do that if the committee would show a reason for doing so. The **WPC** decided they did not want to make it retroactive because that causes problems for people who have already built below the dam. After October 1, 1993, people will be on notice that, if they build below an existing dam, they have a higher standard of recovery. That's the rational basis that the **WPC** concluded was reasonable, and that's why they made that distinction.

REP. GRIMES asked **CHAIRMAN FAGG** if he is aware of how this legislation correlates with other states. **CHAIRMAN FAGG** said he is aware that the **WPC** spent 18 months studying the Dam Safety Acts of other states. **CHAIRMAN FAGG** told **REP. GRIMES** that after studying what all the other states are doing, the **WPC** determined it was in the best interest of Montana to follow this sort of a scheme. It fits Montana's statutes and negligence standards, which is comparative negligence.

Motion/Vote: **REP. TOOLE** moved an amendment to make it retroactive in order to eliminate the problem of people in two different classes. Amendment failed by a vote of 11-7. Those

voting for the amendment were **REPS. BROWN, BERGMAN, BROOKE, MCCULLOCH, RUSSELL, TOOLE** and **WYATT.** Those voting against the amendment were **CHAIRMAN FAGG, REPS. VOGEL, BIRD, CLARK, GRIMES, RICE, SAYLES, SMITH, TASH, WHALEN** and **WINSLOW.**

REP. TOOLE said cases like this will be thrown out before they even get to court. He believes there are better ways to do this; he'd rather see some sort of limit on the overall liability being paid out.

Motion/Vote: **CHAIRMAN FAGG** moved **Mr. Petesch's** amendment for a new section in the applicability clause at the end of the bill, which would say, "This act applies to causes of action occurring on or after October 1, 1993." The amendment passed 15-3 with **REPS. TOOLE, RUSSELL** and **BROWN** voting no.

Vote: **REP. VOGEL MOVED HB 121 DO PASS AS AMENDED.** Motion carried 10-8. Those voting for the bill as amended are **CHAIRMAN FAGG, REPS. VOGEL, BERGMAN, CLARK, GRIMES, RICE, SAYLES, SMITH, TASH** and **WINSLOW.** Those voting against the bill as amended are **REPS. BIRD, BROOKE, BROWN, MCCULLOCH, RUSSELL, TOOLE, WHALEN** and **WYATT.**

EXECUTIVE ACTION ON HB 323

Motion: **REP. BROWN MOVED HB 323 DO PASS.**

Discussion:

REP. BROWN stated that the committee should ignore the kind of haphazard amendments proposed and stay with the bill as originally written. It may not give judges any more authority than they generally have, but it focuses their attention to the fact that they have that authority. He believes the rest of the proposed amendments complicate the issue; therefore, he supports the bill the way it is.

REP. RICE distributed a letter from **John Conner, Assistant Attorney General, Bureau Chief, County Prosecutor Services Bureau. EXHIBIT 4** **REP. RICE** said the one positive aspect of the bill is that perhaps it would be helpful to justices of the peace if this specific condition was placed in the statute.

Vote: **HB 323 DO PASS.** Motion carried unanimously 18-0.

EXECUTIVE ACTION ON SB 29

Motion: **REP. BROWN MOVED SB 29 BE CONCURRED IN.**

Motion/Vote: **REP. WHALEN** moved to amend the bill on page 2, line 24: striking the word "counseling" from the original language of "reasonable and medical counseling costs." The amendment carried unanimously 18-0.

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL DATE 2-3-93

NAME	PRESENT	ABSENT	EXCUSED
Rep. Russ Fagg, Chairman	✓		
Rep. Randy Vogel, Vice-Chair	✓		
Rep. Dave Brown, Vice-Chair	✓		
Rep. Jodi Bird	✓		
Rep. Ellen Bergman	✓		
Rep. Vivian Brooke	✓		
Rep. Bob Clark	✓		
Rep. Duane Grimes	✓		
Rep. Scott McCulloch	✓		
Rep. Jim Rice	✓		
Rep. Angela Russell	✓		
Rep. Tim Sayles	✓		
Rep. Liz Smith	✓		
Rep. Bill Tash	✓		
Rep. Howard Toole	✓		
Rep. Tim Whalen	✓		
Rep. Karyl Winslow	✓		
Rep. Diana Wyatt	✓		

HR:1993
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CS-09

HOUSE STANDING COMMITTEE REPORT

February 4, 1993

Mr. Speaker: We, the committee on Judiciary report that House bill 121 (first reading copy -- white) do pass as amended.

Signed: _____
Dora Pagel, Chair

And, that such amendments read:

1. Title, line 11.
Strike: "AND"
Following: "MCA"
Insert: "; AND PROVIDING AN APPLICABILITY DATE"

2. Page 3.
Following: line 22
Insert: "(3) The provisions of 85-15-395 do not apply to dams and reservoirs at a national priority list site as defined by the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), Public Law 96-510."

3. Page 4, line 13.
Strike: "or rupture"

4. Page 4, line 16.
Following: "and"
Strike: "regularly"
Insert: "properly"

5. Page 5, line 2.
Following: "death"
Insert: "resulting from flows of water from failure of the dam or reservoir"

6. Page 5, line 8.
Following: "and"
Strike: "regularly"
Insert: "properly"

Committee Vote:
Yes 10, No 2.

7. Page 9.
Following: line 14
Insert: "NEW SECTION. Section 7. Applicability. [This act] applies to causes of action accruing on or after October 1, 1993."

-END-

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL VOTE

DATE 2-3-93 BILL NO. HB 121 NUMBER 15

MOTION: Motion to pass carried 10-8

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair		✓
Rep. Jodi Bird		✓
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke		✓
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch		✓
Rep. Jim Rice	✓	
Rep. Angela Russell		✓
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole		✓
Rep. Tim Whalen		✓
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt		✓
	10	8

Senator Blaylock asked Rep. Strizich about alternatives to prison. Rep. Strizich said he would support alternatives to incarceration, but those people who manufacture drugs should be incarcerated and separated from society.

Senator Doherty asked Rep. Strizich about inserting "dry" in front of weight on the bottom of page 2. Rep. Strizich had no objection.

Senator Grosfield asked Rep. Strizich if dry plants would weight a pound. Rep. Strizich said yes.

Closing by Sponsor:
Rep. Strizich said HB 429 would send a clear message to drug manufacturers that they are not welcome in Montana. HB 429 sends a clear message that Montana intends to create a bad business climate for that type of industry. Rep. Strizich told the Committee that HB 429 is a good bill and recommends it BE CONCURRED IN.

HEARING ON HB 121

Opening Statement by Sponsor:
Representative Fagg, District 89, said HB 121 was requested by the Water Policy Committee. HB 121 establishes a gross negligence liability standard in damage suits against dam owners of permitted or engineered dams by people taking up occupancy downstream from an already existing dam. Rep. Fagg said the gross negligence standard would apply if someone moved below an existing dam. HB 121 establishes a penalty for failure to comply with the Montana Dam Safety Act, or rule, or order of the Department of Natural Resources and Conservation.

Proponents' Testimony:

Laurence Siroky, Montana Department of Natural Resources and Conservation, read from prepared testimony. (Exhibit #2)

Gary Fritz, Department of Natural Resources and Conservation, supports HB 121.

Jo Brunner, Executive Director of Montana Resources Association, read from prepared testimony. (Exhibit #3)

Opponents' Testimony:
Russell Hill, Montana Trial Lawyers Association, read from prepared testimony. (Exhibit #4)

William Antrobious, a student at the University of Montana Law School, asked who was going to pay for the dams which are located in Montana. Mr. Antrobious told the Committee that the environment is not compatible with dams. Mr. Antrobious said he

was not opposed to all dams, but HB 121 implies that ALL benefits from a dam are positive, which is not true. Mr. Antrobious said he is opposed to the standard of gross negligence and it should be strict liability.

Derik Corzine, a student at the University of Montana Law School, told the Committee that he had been a commercial river guide for the last eight years. Mr. Corzine said HB 121 encourages people to build more dams, for which he is opposed. Mr. Corzine told the Committee that there are a lot of opportunities already in existence in Montana for white water recreation and would like to see those few stretches of white water that Montana has left, reserved.

Questions From Committee Members and Responses:
Senator Doherty asked Rep. Fagg if the state would be immune from liability. Rep. Fagg said yes.

Senator Doherty asked Rep. Fagg if a 2/3 vote would be required to provide the state immunity. Rep. Fagg said no.

Senator Doherty asked Rep. Fagg why it would not be required. Rep. Fagg asked if there was a requirement. Senator Doherty said yes. Rep. Fagg said he would check into that question.

Senator Doherty asked Rep. Fagg about the definition of downstream. Rep. Fagg said downstream would mean "anyplace below a dam."

Senator Doherty asked Rep. Fagg about existing structures. Rep. Fagg said if a dam was in existence before someone built their house, the standard would be gross negligence in order for that person to recover against the particular dam owner.

Senator Doherty asked Rep. Fagg about equal protection problems because the Berkeley pit is exempt in HB 121. Rep. Fagg said the more exemptions in a bill, the more the bill is weakened. The reason the Butte exemption had some merit is because it is federally regulated.

Chair Yellowtail asked Rep. Fagg about Mr. Hill's equal protection question. Rep. Fagg said people have to take responsibility for their actions. Rep. Fagg said the equal protection argument is the reason for the purpose clause in HB 121, so it is understood by the court system why the Montana legislature has made a policy decision to implement HB 121.

Chair Yellowtail asked Rep. Fagg by what margin HB 121 passed in the House. Rep. Fagg said it was in the 60's, but did not know if it was a 2/3 vote. Rep. Fagg told the Committee he would check on the vote.

Closing by Sponsor:
Rep. Fagg said Mr. Hill told the Committee that failure was defined on page 4, line 17. "Damage resulting from leakage, or overflow of water, or floods caused by the failure of the dam or reservoirs." Rep. Fagg told the Committee that downstream was defined as "anyplace below the dam." Rep. Fagg said he did not want every river in Montana dammed and would be opposed to damming free flowing rivers, like the Yellowstone River. Rep. Fagg said he does not anticipate a flood of dams being built with the passage of HB 121. Rep. Fagg said the Water Policy Committee does want to encourage dams, and feels people should take responsibility for their actions. Rep. Fagg said if someone moved below an existing dam, the Water Policy Committee felt that they should take some responsibility for that. The Water Policy Committee is not saying that person cannot sue, but if a person moved below an existing dam, they would have to prove gross negligence to recover if they were damaged.

ADJOURNMENT

Adjournment: 12:20 p.m.

Wm Yellowtail
BILL YELLOWTAIL, Chair

Rebecca Court
REBECCA COURT, Secretary

BY/rc

ROLL CALL

SENATE COMMITTEE Judiciary DATE 3-5-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown	X		
Senator Crippen			X
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp	X		
Senator Towe	X		
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock	X		
Senator Rye	X		

FC08

Attach to each day's minutes

TESTIMONY OF THE
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
ON HOUSE BILL 121, FIRST READING

BEFORE THE SENATE JUDICIARY COMMITTEE

MARCH 5, 1992

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 3-5-93
BILL NO. HB121

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A GROSS NEGLIGENCE LIABILITY STANDARD FOR CERTAIN DAM OWNERS; EXTENDING THE LIABILITY STANDARDS TO CERTAIN DAMS IN ADDITION TO PERMITTED DAMS; EXTENDING THE LIABILITY STANDARDS TO NONFEDERAL DAMS ON FEDERAL PROPERTY; ESTABLISHING A PENALTY; AMENDING SECTIONS 85-15-107 AND 85-15-305, MCA; AND REPEALING SECTION 85-15-501, MCA."

The Department of Natural Resources and Conservation (DNRC) supports House Bill 121. It is the result of a thorough review of Montana's laws and regulations concerning the safety of dams by the Legislative Water Policy Committee. The DNRC participated in that review and concurs with the Water Policy Committee proposal.

This bill addresses the fact that little precedent has been established in the courts regarding the liability standard to be applied to owners of dams in Montana. Further, the Montana Dam Safety Act establishes a ***negligence*** liability standard for only those dams having operating permits from the DNRC. As such, it falls short in addressing a liability standard for many Montana dams since operating permits are issued only on high-hazard dams -- those larger than 50 acre-feet ***and*** where the loss of life is likely if the structure should fail

The Dam Safety Act was passed with the "*carrot*" of a negligence liability standard as an incentive to high-hazard dam owners to obtain operating permits. That is, high-hazard dam owners having obtained an operating permit become immune from damages unless found negligent. House Bill 121 proposes to extend this "*carrot*" to other types of dams as a means to better assure their safety. More specifically, it would apply a ***negligence*** liability standard to dams constructed, operated, and maintained under the supervision of an engineer, including private dams located on federal land.

This legislation also deals with the liability situation created when a landowner places a home or other structure downstream of an ***existing*** dam. Other states have wrestled with this encroachment problem which is certainly not unique to Montana. A few have provided powers to local governments to zone areas below an existing dam to exclude homes or to deny subdivisions of land below a dam. In contrast, House Bill 121 provides that, if such a dam subsequently fails, the downstream landowner must prove that the dam owner was ***grossly*** negligent before the dam owner can be found liable for

any damages. Under current law, if homes or other structures are placed below an existing dam, it results in the dam being classified as high-hazard and requires the dam owner to comply with established minimum state standards of configuration, operation, and maintenance. The proposed legislation serves to balance the increased cost to a dam owner of assuring the safety of a dam that, absent the new homes or structures, would not be subject to such costs.

The Department supports the proposed legislation and concurs with the amendments added during House action on the bill.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 3
DATE 3-5-93
BILL NO. HB121

HB121 Rep. Fagg Support X March 5, 1993

Jo Brunner, Executive Director, Montana Water Resources Association

Mr.Chairman, members of the committee, for the record, my name is Jo Brunner, and I am the Executive Director of the Montana Water Resources Association

Mr. Chairman, the Montana Water Resources Association is encouraged that this legislation, in Section 2 recognizes the benefits and importance of storage facilities, and that one great impediment to further construction to such facilities of any significant size is the liability related to the structures.

We appreciate the language stating that any structures below the dam ought to be responsible for such actions.

As you are well aware the definition of 'high hazard' (class 2) dam does not necessarily mean that the dam is structurally unsafe. Or that the owner is not complying with the laws relative to maintaining the dam. It means simply that a life could be lost should the dam be topped, or breached, or malfunction.

When a dam is defined as high hazard, the owner of a previously defined structurally safe dam, must make at his own expense, changes and improvements to be in compliance with high hazard dam safety standards.

However, even then, it is almost 100% impossible for dam owners within that classification to get liability insurance, no matter how structurally sound the dam is.

This bill may not increase the availability of insurance for the dams, but it will lessen the liability for the owner by requiring the downstream builder to accept responsibility for their actions.

Perhaps those words are the key --- to accept responsibility for ones actions.

Dam owners who have abided by the law in construction and maintenance of the dams must accept liability for the structure. They are not asking for a lessening of that liability.

Those who move below an existing dam, must take responsibility for their actions. Our society seems quite adept at blaming others for decisions made should that decision prove less than beneficial.

Owners of existing dams, safely constructed or rehabilitated, are put in the position of not having the protection of liability insurance because of actions over which they have no control. And, in essence, liable for the actions of those causing the liability.

I ask that you do pass this bill as printed and presented this day.

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March 5, 1993

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 4
DATE 3-5-93
BILL NO. HB121

Sen. Bill Yellowtail, Chair
Senate Judiciary Committee
Room 325, State Capitol
Helena, MT 59624

RE: HB 121

Mr. Chair, Members of the Committee:

Thank you for this opportunity to express MTLA's opposition to HB 121, which chaotically relaxes the standards of liability applicable to owners of high-hazard dams in Montana. MTLA opposes HB 121 because of several concerns:

1. The consequences of HB 121 extend far beyond the "reasonable and prudent landowner" identified in the bill's purpose clause (page 3, line 24). The bill encompasses victimized landowners, guests, even transient populations with no notice whatsoever of the potential risks they purportedly assume. Although the Water Policy Committee recommended a gross-negligence standard be applied only to victims who "encroach" upon an existing dam, HB 121 applies a gross-negligence standard indiscriminately. The bill extends far beyond the victim who, by locating downstream from an existing non-high-hazard dam, creates for the first time the potential for loss of human life and thus transforms that dam into a high-hazard dam. The bill extends even beyond victims who knowingly locate below existing high-hazard dams. In fact, as the diagram on page 4 of this testimony illustrates, the bill applies a gross-negligence standard to victims who are completely irrelevant to the high-hazard status of dams.

2. Even if the legislature does, consistent with the purpose clause (page 3, lines 16-18) find that potential liability impedes the construction of new dams, HB 121 does absolutely nothing to reduce that liability. Any dam constructed after the bill's effective date will still entail dam-owner liability to all existing property owners for negligence. And the engineers, contractors, consultants and similar entities which build dams for

dam owners gain no liability protection whatsoever from HB 121. Moreover, owners of existing dams will be no less liable for negligence on the bill's effective date than they were a day earlier. At best, the bill--if constitutional--merely limits additional liability exposure created by new landowners who arrive downstream. No insurance company will adjust its liability premiums on the basis of such imponderables. Not surprisingly, the State of Montana--which owns a quarter of all high-hazard dams--predicts that HB 121 will have no fiscal impact on expenditures (self-insurance, claims, etc.).

3. HB 121 leaves the interpretation of dam or reservoir "failure" (page 4, lines 18-19; page 5, line 1; page 5, line 6; page 5, line 9) to Montana courts and, by doing so, may actually subject owners to more, not less, liability. The structural "failure" of a dam or reservoir apparently differs from the operational failure of an owner. Consequently, a dam owner who is only liable now for negligently allowing flows of impounded water exceeding the 100-year floodplain may become, under HB 121, strictly liable for any flows of impounded water, regardless of magnitude, which are due to some cause other than structural "failure." This potential expansion of liability assumes enormous significance in a context which includes reservoirs as well as dams, where "failure" could mean not just the flash-flood of clean water following a dam collapse but also the slow underground seepage or above-ground leakage of pollutants.

4. HB 121 leaves the interpretation of "downstream" (page 5, line 7; page 5, line 10) to Montana courts and, by doing so, may actually subject dam owners to more, not less, liability. In the diagram attached as page 4 of this testimony, cabins A, B, and C are all located downstream from the dam. But HB 121 apparently treats the person who "placed" cabin A far outside the projected flood area no differently than the person who "placed" cabin B within the hydraulic shadow and the person who "placed" cabin C within the 100-year floodplain. A court forced to distinguish between the three, and also faced with HB 121's emphasis on the risks willingly accepted by victims, would likely apply "downstream" to only to cabin C and the well-publicized 100-year floodplain. Moreover, by confining the term "downstream" to dams, HB 121 ignores the potential application of the bill to underground seepage or above-ground leakage from reservoirs.

5. HB 121 will dramatically increase the litigation resulting from failure-related injuries or property damage because it gives Montana courts no guidance in determining whether victims were injured "as a result of a structure being placed downstream from the existing dam" (page 5, lines 11-12)--an enormously subjective determination, especially in the context of a bill which relies on the willing acceptance of risks by those victims, and especially since the term "structures" includes highways, stores, parks, campgrounds, and similar facilities designed to attract transient populations. Because a quarter of Montana's high-hazard dams are state-owned, and because the state's maximum liability is limited to $1.5 million, HB 121 will also force citizens victimized by a state-owned dam into fascinating new legal territory: How should courts divide a single sum among victims who were required to prove different degrees of fault?

6. HB 121 violates constitutional principles of equal protection if it discriminates irrationally between victims who "place" a "structure" before the construction of a high-hazard dam and victims who "place" a "structure" below an existing high-hazard dam,

even though both categories of victim produce identical results vis a vis owner duties. HB 121 also violates constitutional principles of equal protection if it irrationally discriminates between victims who "place" a "structure" below an existing high-hazard dam before the bill's effective date and victims who do so after the bill's effective date, even though both categories of victims produce identical results vis a vis owner duties. HB 121 also violates constitutional principles of equal protection if it irrationally discriminates between property owners and victims who merely visit property. And there is simply no rational possibility that HB 121, by introducing such discrimination, will contribute to lower liability premiums or new construction of dams.

Example: Victim A builds his home within the 100-year floodplain before construction of the dam--which, because of Victim A, is denominated a high-hazard dam. Victim B builds her home "downstream" from the existing dam but well outside the 100-year floodplain.

Example: Victim A buys property "downstream" from an existing high-hazard dam and moves into a home which was built before the effective date of HB 121, perhaps even before construction of the dam. Victim B long ago bought property "downstream" from an existing high-hazard dam but only builds her home there after the bill's effective date.

Example: Victim A buys recreational property "downstream" from an existing dam and visits that property often but never "places" a structure on that property. Victim B, an out-of-state motorist, drives on a highway which was "placed" below an existing dam and stops at a similarly "placed" store for food and gasoline. The same dam "failure" kills them both.

7. HB 121, by unilaterally shifting the financial risks of negligence from dam owners to current property owners, would reduce the value of downstream property owners. In this regard, note the complaints of dam owners in amending House Bill 84 that the mere connotations of the term "high-hazard" scare away potential buyers.

More than 80 high-hazard dams in Montana face a July 1, 1995, deadline for meeting safety standards. The projected cost of rehabilitating state-owned dams alone exceeds $200 million. Few current owners of high-hazard dams insure the actual risks those dams pose. The Water Policy Committee publicly worried about the apparent inability of DNRC to enforce inspection requirements. Current DNRC policies tolerate substandard spillways. Alerted by these warning signs, and confronted by dam owners who seek to insulate themselves from liability for negligence, this committee should demand clear objectives and precise language from the proponents of HB 121. MTLA believes that the bill needs more of both.

Thank you for considering these comments. If I can provide additional information or assistance, please notify me.

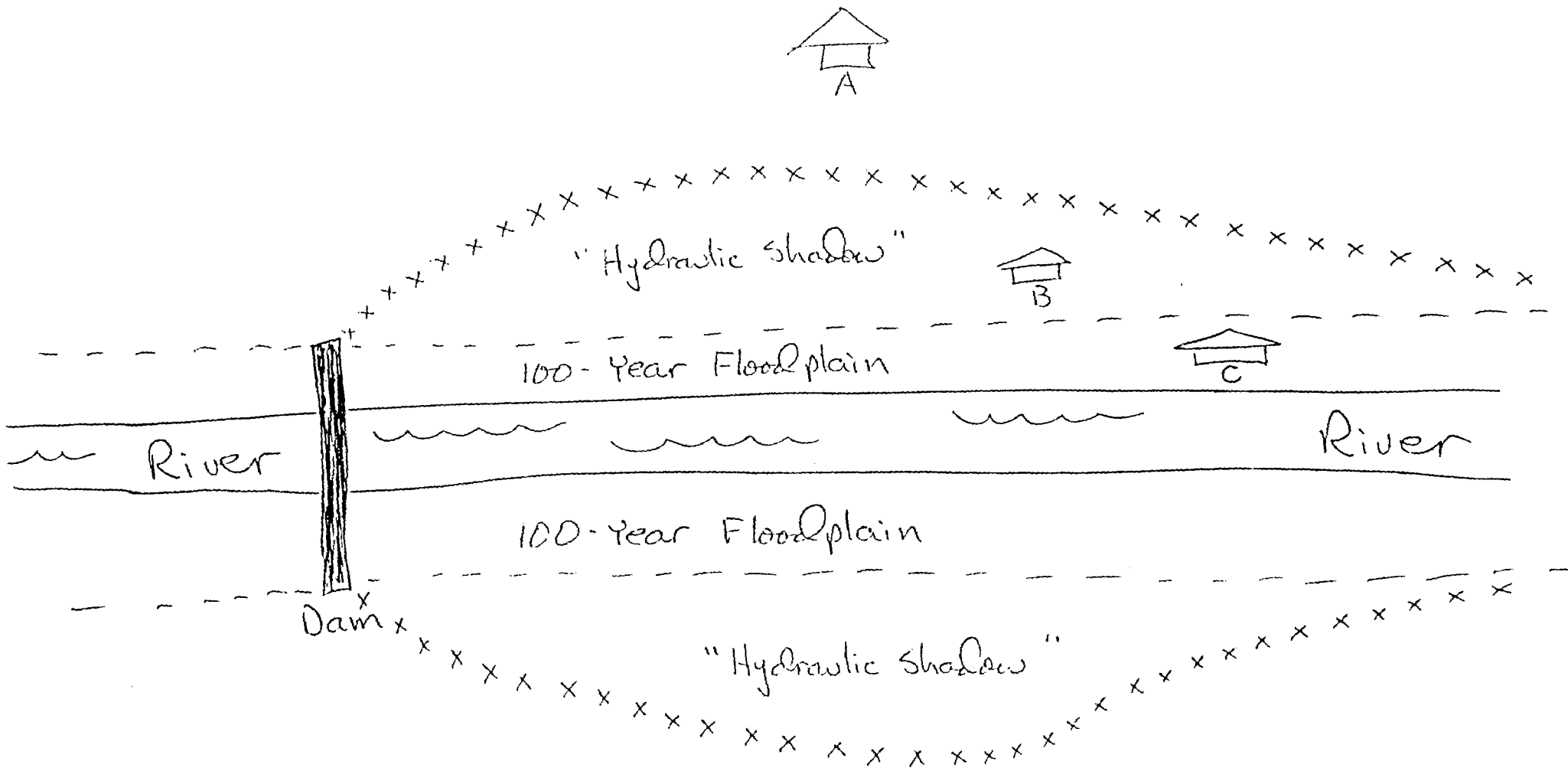
Respectfully,

Russell B. Hill, Executive Director

4
3-5-93
HB 121

EXHIBIT 4
DATE 3-5-93
HB 121

"Downstream"



Page

DATE 3-5-93

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB 121 Foster, HB 323 McLaughlin
HB 429 Stanford, HB 582 Brown,

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Edward A Bradshaw	Asst. DL Chief	323	✓	
Gary Fritz	DNRC	HB121	✓	
Lawrence Siroky	DNRC	HB121	✓	
Mark Ramsford	Flat Co Nat'l Res Ctr	323	✓	
Dave Brown	Sponsor - HD #72	582	✓	
Lauren Maylon	Self	582	✓	
Russell Hill	Mont Trial Lawyers Assn	HB121		✓
A. M. (Bud) Elwell	WCSM + NW WC	HB582	✓	
Dave Gallik	Anaconda MT	323	✓	
John Sullivan	Anaconda MT	323	✓	
Mike Drayson	Anaconda, MT	HB 323	✓	
[illegible]	MWRA	121	✓	
Bryan Lockerby	Mont Police Assn	HB429	✓	
Mike Botticelli	Dept of Justice	HB429	✓	
John Connor	MT County Att'y Assn	HB429	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

F10

Senator Towe moved to AMEND HB 405. (Exhibit #1)

Discussion:
Senator Doherty resisted the amendment because the language in the amendment is very vague.

Chair Yellowtail asked Senator Towe about the statement of intent. Senator Towe said the statement of intent needs to be specific in explaining the purpose of HB 405.

Vote:
The motion to Amend HB 405 FAILED by Roll Call Vote.

Motion/Vote:
Senator Doherty moved HB 405 BE CONCURRED IN AS AMENDED. The motion CARRIED with Senator Blaylock voting NO.

EXECUTIVE ACTION ON HB 121

Motion:
Senator Towe moved to AMEND HB 121. (Exhibit #2)

Discussion:
Senator Towe discussed amendment hb012106.avl.

Vote:
The motion to amend HB 121 CARRIED with Senator Grosfield voting NO.

Motion:
Senator Grosfield moved HB 121 BE CONCURRED IN AS AMENDED.

Discussion:
Senator Doherty told the Committee that he would vote against HB 121 because it is poor public policy. When immunity is provided it promotes inefficiency and carelessness.

Senator Grosfield told the Committee that HB 121 came out of the Water Policy Committee. HB 121 does three things. HB 121 places some responsibility on the people for their actions. In the event of an accident, HB 121 would protect those people who built the dam if it was properly engineered. HB 121 also provides for a civil penalty for violation of the Dam Safety Act, which is $1,000 a day. Senator Grosfield asked the Committee to concur on HB 121.

Vote:
The BE CONCURRED IN AS AMENDED motion for HB 121 failed by Roll Call Vote.

Motion:
Senator Doherty moved to TABLE HB 121.

Discussion:
Senator Grosfield asked Senator Doherty about striking language relating to liability. Senator Doherty said if the language was struck dealing with liability and negligence, he would not oppose the HB 121.

Senator Towe asked Senator Grosfield about a civil penalty. Senator Grosfield said he wanted a civil penalty.

Senator Towe suggested striking everything except section 4 of HB 121.

Senator Grosfield asked Senator Doherty to withdraw his motion.

Senator Doherty withdrew his motion to TABLE HB 121.

Motion:
Senator Grosfield moved to AMEND hb012101.ate.

Discussion:
Senator Grosfield explained the amendments. (Exhibit #3)

Senator Doherty asked Senator Grosfield if it was his intent to strike everything relating to liability and negligence. Senator Grosfield said section 1 and section 2 still relates to liability. Senator Grosfield told the Committee that the language in section 1 and 2 would amend current law.

Senator Towe asked Senator Grosfield if sub 3, page 5 would be included in the amendment to HB 121. Senator Grosfield said yes.

Senator Towe told the Committee that he would support the amendments.

Senator Bartlett asked Senator Grosfield about page 3, subsection 2, line 16. Senator Grosfield said page 3, subsection 2 does not relate to liability, but relates to the issue of dam construction. Senator Grosfield called attention to line 15, page 3, which is in reference to the Water Storage Policy Act which was passed in the last legislature. The Water Storage Policy Act says that if there is a water management problem, all options should be looked at, including storage. If water storage

is the best way to meet the water needs to solve the problem, then it should be accurately pursued.

Senator Doherty suggested striking subsection 2.

Chair Yellowtail said subsection 2 relates to the issue of liability.

Senator Halligan said subsection 2 ties HB 121 in with the Montana Dam Safety Act.

Senator Towe agreed with Senator Halligan. Senator Towe does not feel there would be a problem if subsection 2 was left in.

Vote:
The motion to amend HB 121 CARRIED UNANIMOUSLY.

Motion/Vote:
Senator Grosfield moved HB 121 BE CONCURRED IN AS AMENDED. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 216

Discussion:
Senator Doherty asked the Committee to reconsider the action taken in adopting the amendments for HB 216. The amendments suggested by Senator Towe struck the language "of cost of doing business." The petroleum marketers brought HB 216 forward and they feel the amendments disrupt the intent of HB 216 therefore making it difficult to enforce.

Motion/Vote:
Senator Doherty moved to RECONSIDER HB 216. The motion to reconsider CARRIED UNANIMOUSLY.

Motion/Vote:
Senator Doherty moved to STRIKE amendment hb021602.avl from HB 216 which was adopted March 26, 1993. (Exhibit 4) The motion CARRIED with Senators Grosfield, Towe, Bartlett, and Yellowtail voting NO.

Motion/Vote:
Senator Doherty moved HB 216 BE CONCURRED IN AS AMENDED. The motion CARRIED with Senator Grosfield voting NO.

EXECUTIVE ACTION ON HB 323

ROLL CALL

SENATE COMMITTEE Judiciary DATE 2-27-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown	X		
Senator Crippen			X
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp	X		
Senator Towe	X		
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock	X		
Senator Rye			X

FC8

Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

March 29, 1993

MR. PRESIDENT:
We, your committee on Judiciary having had under consideration House Bill No. 121 (third reading copy -- blue), respectfully report that House Bill No. 121 be amended as follows and as so amended be concurred in.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Title, lines 5 and 6.
Strike: "ESTABLISHING" on line 5 through "OWNERS;" on line 6

2. Page 3, line 23 through page 4, line 11.
Strike: subsection (3) in its entirety

3. Page 4, line 23.
Following: "is"
Insert: ","
Strike: ":"

4. Page 4, line 24.
Strike: "(a)"

5. Page 5, line 1.
Strike: ";"
Insert: "."

6. Page 5, line 3.
Strike: "or"

7. Page 5, lines 4 through 12.
Strike: subsection (b) in its entirety

8. Page 5, line 19.
Following: line 18
Insert: "[(4) The limitation on liability provided in subsection (2) does not apply to a state-owned dam.]"

Amd. Coord.
Sec. of Senate

Grosfield
Senator Carrying Bill

9. Page 6.
Following: line 6
Insert:

"NEW SECTION. Section 7. Two-thirds vote required. It is the intent of the legislature that the provisions of [section 3] apply to all qualifying state-owned dams as well as other dams. Because [section 3], when applied to state-owned dams, limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage. If [this act] fails to receive the required two-thirds vote, the bracketed language in [section 3(4)] is effective. If [this act] receives the required two-thirds vote, the bracketed language is void."

Renumber: subsequent section

-END-

ROLL CALL VOTE

SENATE COMMITTEE Judiciary BILL NO. HB121

DATE 3-28-93 TIME 3:26 A.M. (P.M.)

NAME	YES	NO
Senator Yellowtail		X
Senator Doherty		X
Senator Brown		X
Senator Crippen		
Senator Rye	X	
Senator Grosfield	X	
Senator Halligan		X
Senator Harp	X	
Senator Towe		X
Senator Bartlett		X
Senator Blaylock	X	
Senator Franklin		X

Rebecca Lowe
SECRETARY

Bill Yellowtail
CHAIR

MOTION: to HB121 BC 1AA failed.

Amendments to House Bill No. 121
Third Reading Copy (BLUE)

Requested by Senator Towe
For the Committee on Judiciary

Prepared by Valencia Lane
March 18, 1993

1. Page 5, line 12.
Following: "dam."
Insert: "For the purposes of subsection (b), "placed" means to locate a structure downstream from an existing dam after [the effective date of this act]."

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 3-27-93
BILL NO. HB121

Amendments to House Bill No. 121
Third Reading Copy (BLUE)

Requested by Senator Towe
For the Committee on Judiciary

Prepared by Valencia Lane
March 18, 1993

1. Page 5, line 12.
Following: "dam."
Insert: "For the purposes of subsection (b), "placed" means to locate a structure downstream from an existing dam after [the effective date of this act]."

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 3-27-93
BILL NO. HB121

Amendments to House Bill No. 121
Third Reading Copy (BLUE)

Requested by Senator Towe
For the Committee on Judiciary

Prepared by Valencia Lane
March 18, 1993

1. Page 5, line 12.
Following: "dam."
Insert: "For the purposes of subsection (b), "placed" means to locate a structure downstream from an existing dam after [the effective date of this act]."

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 3-27-93
BILL NO. HB121

Amendments to House Bill No. 121
Third Reading Copy

Requested by Sen. Grosfield
For the Committee on Judiciary

Prepared by Todd Everts
March 26, 1993

1. Title, lines 5 and 6.
Strike: "ESTABLISHING" on line 5 through "OWNERS;" on line 6

2. Page 3, line 23 through page 4, line 11.
Strike: subsection (3) in its entirety

3. Page 4, line 23.
Following: "is"
Insert: ","
Strike: ":"

4. Page 4, line 24.
Strike: "(a)"

5. Page 5, line 1.
Strike: ";"
Insert: "."

6. Page 5, line 3.
Strike: "or"

7. Page 5, lines 4 through 12.
Strike: subsection (b) in its entirety

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 3
DATE 3-27-93
BILL NO. HB121